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In the Supreme Court of the United States

OCTOBER TERM, 1958

JAMES S. PATTERSON, GENERAL ADMINISTRATOR FOR MOBILE COUNTY, ALABAMA, AS ADMINISTRATOR OF THF ESTATE OF EDGAR A. DOODY, JR., DECEASED, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statutes involved	2
Statement	3
Summary of argument	9
Argument	13
I. This Court's determination in *Johansen* v. *United States*, 343 U.S. 427, that federal compensation benefits are the exclusive remedy for civilian employees of the Government, who are injured in the performance of duty as seamen on publicly-operated vessels employed in the public service, is equally applicable with respect to civilian employees of the Government who are injured in the performance of duty as seamen on publicly-operated vessels employed in merchant service	13
A. The *Johansen* opinion	14
B. The Eighth Circuit's *Doyle* opinion misinterpreted *Johansen*	18
II. The Compensation Act Amendments of 1949 did not evidence a congressional recognition that federal seamen who are entitled to compensation benefits also have a right of action against the Government	21
III. When Congress, for special reasons, has thought it desirable that seamen employed on Government vessels engaged in merchant service should have the right to sue the United States under the Suits in Admiralty Act, it has passed special legislation to that effect and prohibited such seamen from receiving compensation	25
Conclusion	30
Appendix	31

CITATIONS

Cases:

	Page
Aliotti v. *United States*, 221 F. 2d 598	17
Aubrey v. *United States*, 254 F. 2d 768	15
Berizzi Bros. Co. v. *S. S. Pesaro*, 271 U.S. 562	13
Calmar S.S. Corp. v. *United States*, 345 U.S. 446	16
Canadian Aviator, Ltd. v. *United States*, 324 U.S. 215	17
Compania Espanola v. *Navemar*, 303 U.S. 68	13–14
Cowan v. *Inland Waterways Corp.*, 121 F. Supp. 683	13
De Vos v. *United States*, 121 F. Supp. 514	25
Feres v. *United States*, 340 U.S. 135	15
Inland Waterways Corp. v. *Doyle*, 204 F. 2d 874	5, 9, 10, 11, 13, 18, 20, 21
Johansen v. *United States*, 343 U.S. 427	5, 6, 8, 9, 10, 11, 13, 14, 15, 18, 19, 20, 21, 22, 23–24, 25, 29
Lake Monroe, The, 250 U.S. 246	17
Lewis v. *United States*, 190 F. 2d 22	15
McMahon v. *United States*, 342 U.S. 25	18
Mejia v. *United States*, 152 F. 2d 686, certiorari denied, 328 U.S. 862	16
Olavarria & Co. v. *United States*, 56 F. Supp. 758	17
Panama Canal Co. v. *Grace Line, Inc.*, 356 U.S. 309	4
Peru, Ex Parte, 318 U.S. 578	14
Sasse v. *United States*, 201 F. 2d 871	25
Thomason v. *United States*, 184 F. 2d 105	16
United States v. *Babcock*, 250 U.S. 328	18
United States v. *Caffey*, 141 F. 2d 69	16
United States v. *Marine*, 155 F. 2d 456	10, 15, 18, 20
United States v. *Meyer*, 200 F. 2d 110	25
United States v. *South Buffalo R. Co.*, 333 U.S. 771	22
Wilder Manufacturing Co. v. *Corn Products Co.*, 236 U.S. 165	18

Statutes:

Act of July 8, 1946, Sec. 202, 60 Stat. 501	4
Act of September 26, 1950, 64 Stat. 1038	21
Canal Zone Code Title 2:	
Sec. 245, 62 Stat. 1076	21
Sec. 246(a), 62 Stat. 1076	4
Sec. 248(d), 62 Stat. 1078	21

Statutes—Continued

Page

Federal Employees' Compensation Act of 1916, 39 Stat. 742, 5 U.S.C. 751 ..... 2, 3, 4, 6, 7, 8, 9, 10, 14, 16, 17, 18, 19, 21, 22, 25, 26, 33
Amendments of October 16, 1949, 63 Stat. 854 ... 2, 21, 22, 33
Sec. 201 33–34
Sec. 302 34
Sec. 303 34
Sec. 303(g) 25, 34–35
Sec. 305(a) 35
Sec. 305(b) 35
Public Vessels Act of 1925, 43 Stat. 1112, 46 U.S.C. 781 ..... 2, 3, 5, 9, 10, 11, 14, 16, 17, 18, 21, 31–32
1939 Reorganization Plan No. II, §6, 53 Stat. 1434, 4 F.R. §2732 5
1950 Reorganization Plan No. 21, 15 F.R. 3178, 64 Stat. 1273 4
Shipping Act of 1916, 39 Stat. 728 ..... 17, 19
43 Stat. 360, 49 U.S.C. 151 5
Suits in Admiralty Act of 1920, 41 Stat. 525, 46 U.S.C. 741, *et seq* 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 31
10 U.S.C. 4745 21
10 U.S.C. 4747 21
46 U.S.C. 713 3
War Shipping Administration (Clarification) Act of 1943, 57 Stat. 45, 50 U.S.C. App. 1291 .. 4, 12, 25, 29, 36–37

Miscellaneous:

Comment, *Responsibility of the United States on Maritime Claims Arising out of the Operation of Government-Owned Vessels*, 39 Yale L. J. (1930), 1189 17
58 Cong. Rec. 7317 17
95 Cong. Rec. 13609 24
95 Cong. Rec. 14060 24
House Merchant Marine and Fisheries Committee, 77th Cong., 2d Sess., Hearings on H.R. 7424 (September 2, 1942):
p. 6 ..... 27, 28
p. 14 ..... 26, 27

Miscellaneous—Continued

	Page
H. Rept. No. 223, 66th Cong., 1st Sess., pp. 1–3	17
H. Rept. No. 497, 66th Cong., 2d Sess., pp. 3–4	17
H. Rept. No. 107, 78th Cong., 1st Sess., p. 34	27
2 Larson, *Workmen's Compensation Law* (1952), §65.00	15
Note, *The Maritime Liability of the United States*, 100 Univ. Pa. L. Rev. (1952), 689	17
Note, 14 N. Car. L. Rev. (1936) 199	15
Prosser, *Torts* (1941), p. 543	15
S. Rept. No. 223, 66th Cong., 1st Sess., pp. 1–3	17
Schneider, *Workmen's Compensation Law* (1941), §89–154	15

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OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York in *Patterson* (R. 22–25) is reported at 129 F. Supp. 794. The opinion of the District Court for the Southern District of New York in *Sullivan* (R. 10–12) is reported at 130 F. Supp. 53. The opinion of the District Court for the Eastern District of New York in *Vallebuona* (R. 53–54) is reported at 1955 A.M.C. 1234. There were no opinions written by the District Court in *Hays* and

Duncan. The consolidated opinion, per Hand, J., of the United States Court of Appeals for the Second Circuit (R. 55–58) in *Patterson, Sullivan, Hays,* and *Duncan* is reported at 258 F. 2d 702. The *per curiam* opinion of the Court of Appeals in *Vallebuona* (R. 58) is reported at 258 F. 2d 701.

JURISDICTION

The judgments of the Court of Appeals in each of the cases were entered on July 11, 1958 (R. 59–62). The petition for a writ of certiorari was filed on October 8, 1958, and granted on November 24, 1958 (R. 62). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether civilian employees of the United States who are entitled to the benefits of the Federal Employees' Compensation Act, and who are injured in the performance of duty as seamen on publicly-owned and operated vessels employed in merchant service, have a right of action against the United States under the Suits in Admiralty Act.

STATUTES INVOLVED

The pertinent provisions of the Suits in Admiralty Act of 1920, 41 Stat. 525, 46 U.S.C. 741, the Public Vessels Act of 1925, 43 Stat. 1112, 46 U.S.C. 781, the Federal Empolyees' Compensation Act of 1916, 39 Stat. 742, 5 U.S.C. 751, the War Shipping Administration (Clarification) Act of 1943, 57 Stat. 45, 50 U.S.C. App. 1291, and the Federal Employees' Compensation Act Amendments of October 14, 1949,

63 Stat. 854, are set forth in the Appendix, *infra*, pp. 31–37.

STATEMENT

The petitioners in these five cases each claim a right of action against the United States under the Suits in Admiralty Act for damages sustained in the performance of duty as seamen on publicly-operated vessels. In each case, the Government's sole contention is that petitioners have no right of action against the United States because of their entitlement to the benefits of the Federal Employees' Compensation Act, The facts in each of the cases are as follows:

1. *Patterson:* This action was brought by the administrator of the estate of Edgar A. Doody, Jr., to recover damages for the wrongful death of the decedent allegedly sustained in the performance of duty in 1945 as a seaman [1] on board the S. S. HANGING ROCK, a vessel owned and operated by the Government (R. 14–15). The jurisdiction of the court was invoked under both the Public Vessels Act of 1925, *infra*, pp. 31–32, and the Suits in Admiralty Act of 1920, *infra*, p. 31 (R. 14, 15). The Government answered the libel (R. 17–20) and, in addition, filed exceptive allegations (R. 20–22) which set forth (1) that, at all pertinent times, the decedent was a civil service employee of the United States through the mechanical division of the Panama Canal;[2] (2) that

[1] Under 46 U.S.C. 713, all persons employed aboard a vessel, except "apprentices," are "seamen."

[2] Panama Canal Company, which succeeded to the operation of the Mechanical Division of the Panama Canal, is a wholly owned instrumentality of the United States, all of whose stock is held by the President or his designee. Canal Zone

the decedent was fatally injured while performing his duties on the S. S. HANGING ROCK, "a public vessel of the United States, publicly owned and publicly operated by the War Shipping Administration [3] and employed as a merchant vessel"; (3) that, pursuant to the provisions of the Federal Employees' Compensation Act, benefits had been awarded and paid to the widow and minor daughter of the decedent; and (4) that the right to compensation benefits was exclusive of any right of action for the death of the decedent.

The Government's exceptive allegations, unchallenged by the libelant,[4] were sustained by the District

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Code, Title 2, § 246(a), 62 Stat. 1076. The present designee is the Secretary of the Army. See *Panama Canal Co. v. Grace Line, Inc.*, 356 U.S. 309, 311–315.

[3] Section 202 of the Act of July 8, 1946, 60 Stat. 501, terminated the War Shipping Administration as of September 1, 1946, and transferred its functions to the United States Maritime Commission for the period from September 1, 1946 to December 31, 1946, for the purpose of liquidating the Administration. Upon the abolition of the United States Maritime Commission (1950 Reorg. Plan No. 21, 15 F.R. 3178, 64 Stat. 1273), the remaining functions were transferred to the Department of Commerce, Maritime Administration.

[4] The District Court noted that the pleadings had uncontrovertibly disclosed that, although the decedent had been injured aboard a vessel owned and operated by the War Shipping Administration, whose employees Congress had excluded from the Federal Employees' Compensation Act, he had not been employed through the War Shipping Administration, but rather was a "civil service employee of the United States through the mechanical division of the Panama Canal * * * and hence entitled to the benefits of the Federal Employees' Compensation Act (R. 23). The War Shipping Administration (Clarification) Act, 57 Stat. 45, 50 U.S.C. App. 1291, had excepted "employees of the United States through the War Shipping Administration" from coverage under the Compensation Act and had affirmed the right of such seamen to sue under the Suits

Court (Dimock J.) and the libel was dismissed on the authority of *Johansen* v. *United States*, 343 U.S. 427 (R. 22–26). The libelant, relying on *Inland Waterways Corp.* v. *Doyle*, 204 F. 2d 874 (C.A. 8), had sought to distinguish *Johansen* on the ground that the action in that case was brought under the Public Vessels Act, and that libelant's action could lie under the Suits in Admiralty Act since the HANGING ROCK was employed as a merchant vessel (R. 23–24). Judge Dimock rejected this distinction, holding that the "same considerations" making the Compensation Act remedy exclusive with respect to suits invoked under the Public Vessels Act are applicable to those invoked under the Suits in Admiralty Act (R. 24–25).

2. *Sullivan:* This action was brought by Leonard Lester Sullivan to recover damages and maintenance and cure for personal injuries allegedly sustained in the course of his employment in 1952 as a seaman aboard the towboat ILLINOIS, a ship which was owned, manned and operated by the Inland Waterways Corporation, a wholly owned instrumentality of the United States (R. 6, 10–11).[5] The jurisdiction of the court was invoked under the Suits in Admiralty Act.

in Admiralty Act. See, *infra*, pp. 25 ff. Petitioner Patterson does not dispute the employment status of the decedent (Br. 1).

[5] The Inland Waterways Corporation was created by Congress in 1924 for the purpose, among others, "of carrying on the operations of the Government-owned inland, canal, and coastwise waterways system to the point where the system can be transferred to private operation to the best advantage of the Government * * *". 43 Stat. 360, 49 U.S.C. 151. Its functions and obligations were transferred to the Department of Commerce by 1939 Reorganization Plan No. II, § 6 (53 Stat. 1434, 4 F.R. 2732). The vessels of the Inland Waterways Corporation were sold in 1953.

The Government filed exceptive allegations to the libel (R. 9–10) which set forth (1) that the ILLINOIS was "a public vessel of the United States, publicly operated and employed as a merchant vessel"; (2) that, at all pertinent times, the libelant was a civilian employee of the United States through the Inland Waterways Corporation; and (3) that, as such, libelant's sole and exclusive remedy for his injuries was under the Federal Employees' Compensation Act. The District Court (Kaufman, J.) sustained the Government's unchallenged exceptive allegations and dismissed the libel (R. 13). Relying on *Johansen* v. *United States*, 343 U.S. 427, Judge Kaufman declared (R. 12–13): "I can discern no rational basis for granting an election of remedies to a civilian employee of the United States aboard a merchant vessel when his counterpart aboard a public vessel is denied such an election."

3. *Hays:* This action was brought by Melvin A. Hays to recover damages and maintenance and cure for personal injuries allegedly sustained in the course of his employment as a seaman aboard the MISSOURI, a ship which was owned, manned and operated by the Inland Waterways Corporation, a wholly owned instrumentality of the United States (R. 32–38). The jurisdiction of the court was invoked under the Suits in Admiralty Act (R. 32).

The Government filed exceptive allegations to the libel (R. 43–44) which set forth (1) that the MISSOURI

was "a public vessel of the United States, publicly operated and employed as a merchant vessel"; (2) that, at all pertinent times, the libelant was a civilian employee of the United States through the Inland Waterways Corporation entitled to the benefits of the Federal Employees' Compensation Act; and (3) that libelant's sole and exclusive remedy for his injuries was under the Compensation Act.

The District Court (Bicks, J.) sustained the Government's unchallenged exceptive allegations and dismissed the libel (R. 44).

4. *Duncan*: This action was brought by Sterling Eugene Duncan to recover damages and maintenance and cure for personal injuries allegedly sustained in the course of his employment as a seaman aboard the towboat BATON ROUGE, a ship which was owned, manned and operated by the Inland Waterways Corporation, a wholly owned instrumentality of the United States (R. 26–29). The jurisdiction of the court was invoked under the Suits in Admiralty Act (R. 26).

The Government filed exceptive allegations to the libel (R. 29–30) which set forth (1) that the BATON ROUGE was "a public vessel of the United States, publicly operated and employed as a merchant vessel"; (2) that, at all pertinent times, the libelant was a civilian employee of the United States through the Inland Waterways Corporation entitled to the benefits of the Federal Employees' Compensation Act; and (3) that the libelant's sole and exclusive remedy for his injuries was under the Compensation Act.

The District Court (Palmieri, J.) also sustained the Government's unchallenged exceptive allegations and dismissed the libel (R. 31).

5. *Vallebuona:* This action was brought by Albert Vallebuona to recover damages allegedly sustained as a seaman aboard the Government-owned vessel, the BC–6034. The jurisdiction of the court was invoked under both the Public Vessels Act and the Suits in Admiralty Act (R. 44–45).

The Government filed exceptive allegations to the libel (R. 47–48) which set forth (1) that, at all pertinent times, the libelant was a civilian employee of the Department of the Army assigned to the Terminal Operations Division, Harbor Craft Branch, Operations Section; (2) that the BC–6034, the vessel on which the libelant was allegedly injured, was an Army barge and was "a public vessel of the United States engaged in the public service"; (3) that, after his injury, the libelant had applied for and was awarded compensation benefits under the Federal Employees' Compensation Act; and (4) that the libelant's sole and exclusive remedy for his injuries was under the Compensation Act.

The District Court (Inch, J.), noting that "the libel on its face indicates that libelant was a civilian seaman employed on a public vessel," sustained the Government's exceptive allegations and dismissed the libel on the authority, principally, of *Johansen* v. *United States,* 343 U.S. 427 (R. 53–54).

In each of these cases, the Court of Appeals affirmed the judgments of the District Court (R. 59–62). Judge Learned Hand, writing the single opinion

for the court in *Patterson, Sullivan, Hays,* and *Duncan* (R. 55–58),[6] held that the "same reasoning" in *Johansen,* which precluded a civilian seaman employee of the Government from suing under the Public Vessels Act, applied with equal force to civilian seamen employees of the Government who seek to bring an action under the Suits in Admiralty Act. In so holding, the court disagreed with the contrary result reached by the Court of Appeals for the Eighth Circuit in *Inland Waterways Corp.* v. *Doyle,* 204 F. 2d 874. In *Doyle,* the Eighth Circuit, although it stated that it could conceive of no reason for treating seamen employed on Government "merchant vessels" differently from those employed on Government "public vessels", concluded that, despite their having obtained an award of federal compensation benefits, *Johansen* required that seamen employed on Government "merchant vessels" also be entitled to recover under the Suits in Admiralty Act.

SUMMARY OF ARGUMENT

I

We believe that this Court's decision in *Johansen* v. *United States,* 343 U.S. 427, is dispositive of the issue presented in these cases. In *Johansen,* the Court held that the Federal Employees' Compensation Act is

[6] The *per curiam* opinion affirming the District Court's decree in *Vallebuona* (R. 58) was entered the same day. The panel that decided *Patterson, Sullivan, Hays,* and *Duncan,* consisted of Judges Hand, Hincks and Moore. *Vallebuona* was separately decided by a panel consisting only of Judges Hand and Hincks. Judge Moore, formerly the United States Attorney for the Eastern District of New York, had represented the Government in the District Court in *Vallebuona* (R. 48, 53).

the exclusive remedy for federal civilian seamen injured in the performance of duty on publicly-operated vessels engaged in public service, and that such seamen are precluded from claiming a right of action against the United States under the Public Vessels Act. And the Court, in expressly disapproving the Fourth Circuit's earlier decision in *United States* v. *Marine,* 155 F. 2d 456, also indicated that its determination as to the exclusiveness of the Compensation Act remedy applied equally to actions brought under the Suits in Admiralty Act (the companion statute of the Public Vessels Act) by those injured on publicly-operated vessels engaged in merchant service. As the Court thus implicitly recognized in *Johansen,* no valid reason existed for making the exclusiveness of the Compensation Act remedy turn on the distinguishing factor of whether the action is brought under the Public Vessels Act or the Suits in Admiralty Act.

Both the Second Circuit in these cases and the Eighth Circuit in *Inland Waterways Corp.* v. *Doyle,* 204 F. 2d 874, agree that such a distinction is unsound. However, unlike the Second Circuit here, the Eighth Circuit was of the view that this Court's *Johansen* decision supported the distinction.

We submit that the Second Circuit is clearly right and that the Eighth Circuit's contrary decision (1) failed to take cognizance of this Court's express rejection of *Marine* (a Suits in Admiralty Act case), and (2) mistakenly confused the significance of the Court's discussion in *Johansen* of the comparative rights of "merchant seamen" on Government-owned vessels and "public vessel seamen" on publicly-operated vessels.

In referring to "merchant seamen", the Court was speaking of seamen aboard Government-owned ships chartered for private operation, not of seamen who were Government employees.

Acceptance of the Eighth Circuit's result in *Doyle* would be to impute to Congress an intention to discriminate between the remedies available to seamen employees of the Government merely on the basis of the nature of the service of the particular publicly-operated vessel on which they are employed, despite the fact that there is nothing in either the Suits in Admiralty Act or the Public Vessels Act, both of which form part of the same legislative scheme, which would justify this discrimination.

II

Petitioners contend that the 1949 amendments to the Compensation Act, *infra*, pp. 33–35, demonstrated a Congressional recognition that seamen who are entitled to federal compensation benefits also have a right of action against the Government; they argue that, by these amendments, Congress established for the first time the exclusiveness of the compensation remedy and, by a proviso, deliberately excepted seamen from the exclusiveness limitation. But this very argument was fully considered and rejected by the Court in *Johansen*, where, after a careful review of the legislative history of the amendments, the Court concluded (343 U.S. 427, 438): "If the remedy of compensation was exclusive prior to the passage of the 1949 amendment [as it was], it is exclusive now."

III

The Clarification Act of 1943, *infra*, pp. 36-37, which extended to merchant seamen employed through the War Shipping Administration the right of privately-employed seamen serving on Government-owned vessels to sue the United States under the Suits in Admiralty Act and prohibited such WSA seamen from receiving compensation benefits, conclusively demonstrated the Congressional purpose in not allowing seamen on publicly-operated vessels to have both a right of action against the United States as well as a right to compensation benefits. In granting the WSA merchant seamen (temporarily in Government service in order to man the merchant fleet supporting the war effort), the right to bring suit against the United States under the Suits in Admiralty Act, Congress never considered the possibility of also including them under compensation coverage. Surely, if, as petitioners argue, injured seamen on other Government vessels engaged in merchant service had both a right to compensation and a right of action for damages, Congress would not have discriminated against WSA crew members by giving them only a right of recovery by means of suit, and depriving them of a right to federal compensation.

ARGUMENT

I

THIS COURT'S DETERMINATION IN *Johansen* v. *United States*, 343 U.S. 427, THAT FEDERAL COMPENSATION BENEFITS ARE THE EXCLUSIVE REMEDY FOR CIVILIAN EMPLOYEES OF THE GOVERNMENT, WHO ARE INJURED IN THE PERFORMANCE OF DUTY AS SEAMEN ON PUBLICLY-OPERATED VESSELS EMPLOYED IN PUBLIC SERVICE, IS EQUALLY APPLICABLE WITH RESPECT TO CIVILIAN EMPLOYEES OF THE GOVERNMENT WHO ARE INJURED IN THE PERFORMANCE OF DUTY AS SEAMEN ON PUBLICLY OPERATED VESSELS EMPLOYED IN MERCHANT SERVICE

The Court of Appeals for the Eighth Circuit in *Inland Waterways Corp.* v. *Doyle*, 204 F. 2d 874, and the Court of Appeals for the Second Circuit in the present cases are in full agreement that there exists "no sound reason for making a distinction with respect to remedies between civilian seamen employed by the United States on its 'public vessels' and those employed on its 'merchant vessels' " (cf. *Doyle, supra*, at 878 with R. 57–58). The Eighth Circuit reluctantly held, however, that this Court's *Johansen* decision required the making of such a distinction,[7] while in these cases the Second Circuit was convinced that *Johansen* "did not mean to recognize any such distinction" (R. 57).[8] In these circumstances, we believe it appro-

[7] The Eighth Circuit's holding was also adopted by a District Court in *Cowan* v. *Inland Waterways Corp.*, 121 F. Supp. 683 (E.D. Ill.).

[8] It may be that the Eighth Circuit's failure to appreciate the continuing status of publicly-operated vessels as "public vessels", despite their employment in merchant service, contributed to the court's conclusion in *Doyle*. A "public vessel"

priate, at the outset, to discuss the Court's opinion in *Johansen* to determine which of the conflicting appellate opinions is more properly in accord with that decision. In our view, the Second Circuit is clearly right.

A. THE *Johansen* ONINION

In *Johansen,* the specific issue before the Court was "whether Congress, in enacting the Public Vessels Act of 1925 * * * has consented that the United States be sued for 'damages' by or on behalf of members of the civil service component of the crew of military transport vessels." 343 U.S. 427, 428. The Court held "that the benefits available to such seamen under the Federal Employees Compensation Act * * * are of such a nature as to preclude a suit for damages under the Public Vessels Act". *Ibid.* This conclusion followed from the Court's determination (1) that the Public Vessels Act was not intended to confer additional rights on claimants entitled to the benefits of the Compensation Act (*id.* at 433), and (2) that, although the Compensation Act did not in terms

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of the United States, so long as it is publicly-operated and possessed, is no less a "public vessel" when it is engaged in merchant service than when it is engaged in Government work. "[W]hen, for the purpose of advancing the trade of its people or providing revenue for its treasury, a government acquires, mans and operates ships in the carrying trade, they are public ships in the same sense that war ships are." *Berizzi Bros. Co.* v. *S.S. Pesaro*, 271 U.S. 562, 574; see also, *Compania Espanola* v. *Navemar*, 303 U.S. 68, 74; *Ex Parte Peru*, 318 U.S. 578. For this reason, we avoid, throughout this brief, characterizing Government vessels as "public vessels" or "merchant vessels", but, rather, refer to them as "publicly-operated vessels engaged in public service", or "publicly-operated vessels engaged in merchant service".

state that it was the exclusive remedy against the United States for all the employees within its coverage, its comprehensive and uniform character compelled the conclusion that it was clearly intended to be exclusive, and, absent specific legislative exception, it would be so construed (*id.* at 439–441).[9]

Admittedly, the Court's determination in *Johansen* as to the exclusiveness of the Compensation Act remedy arose in connection with actions instituted under the Public Vessels Act.[10] But the Court took pains to indicate that its holding was not to be limited only to actions arising under that Act. After noting that "[t]here is no reason to have two systems of redress", the Court expressly declared that *United States* v. *Marine,* 155 F. 2d 456 (C.A. 4), which had allowed a civilian employee of the Government entitled to compensation benefits to bring suit under the Suits in Admiralty Act, had been incorrectly decided. In explicit language, the Court observed that the "opinions below in the cases we are considering take the opposite [view from *United States* v. *Marine*] and, we think, the better view". 343 U.S. 427, 439.

It seems plain, therefore, that the Court did not

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[9] This conclusion is in complete accord with the general rule concerning compensation statutes, *i.e.*, that, unless the statute is by its terms elective, the compensation rights provided are deemed to be exclusive wherever the statute is applicable. Cf. *Feres* v. *United States*, 340 U.S. 135; *Aubrey* v. *United States*, 254 F. 2d 768 (C.A.D.C.); *Lewis* v. *United States*, 190 F. 2d 22 (C.A.D.C.); see also, 2 Larson, *Workmen's Compensation Law* (1952), § 65.00; Schneider, *Workmen's Compensation Law* (1941), § 89–154; Prosser, *Torts* (1941), p. 543; Note, 14 N. Car. L. Rev. (1936) 199.

[10] *I.e.*, in a case in which the seaman was serving aboard a publicly-operated vessel engaged in public service.

recognize any distinction between, on the one hand, the remedies of civilian employees of the Government who are injured in the performance of their duties on publicly-operated vessels engaged in public employment, and, on the other, the remedies of civilian employees of the Government who are injured in the performance of their duties on Government-operated vessels engaged in merchant employment. Since both classes of federal employees were undeniably entitled to compensation benefits, it mattered not whether the jurisdiction of the court was invoked under the Public Vessels Act (by Government employees injured on publicly-operated vessels engaged in public service), or under the Suits in Admiralty Act (by Government employees injured on publicly-operated vessels engaged in merchant service). The Compensation Act remedy was the exclusive remedy in both instances.

That the Court would not deem it appropriate, in determining the exclusiveness of the Compensation Act remedy, to distinguish between actions arising under the Public Vessels Act and those under the Suits in Admiralty Act is easily understandable. Both admiralty claim statutes are consistently read in *pari materia* as part of the same legislative scheme. Though not phrased in precisely complementary terms, both statutes form and were intended to form an integrated and entire system subjecting the United States to admiralty suits by providing two overlapping nets for the reception and accommodation of litigation resulting from the operation of vessels by or for the United States. See *Calmar S.S. Corp.* v. *United States,* 345 U.S. 446, 451; *United States* v. *Caffey,* 141 F. 2d 69 (C.A. 2); *Mejia* v. *United States,*

152 F. 2d 686 (C.A. 5), certiorari denied, 328 U.S. 862; *Thomason* v. *United States,* 184 F. 2d 105 (C.A. 9); *Aliotti* v. *United States,* 221 F. 2d 598, 602 (C.A. 9); *Olavarria & Co.* v. *United States,* 56 F. Supp. 758, 763 (S.D. Ala.).[11]

The Suits in Admiralty Act, on the one side, was designed to immunize those vessels in which the United States had an interest, and which were employed as merchant vessels, from the seizure which had been held permissible under the Shipping Act of 1916, 39 Stat. 728 (*The Lake Monroe,* 250 U.S. 246), and, in its stead, permitted the filing of a libel in personam against the Government in cases involving Government-owned ships "employed as merchant vessels." 46 U.S.C. 742; see H. Rept. No. 497, 66th Cong., 2d Sess., pp. 3–4; S. Rept. No. 223, 66th Cong., 1st Sess., pp. 1–3; 58 Cong. Rec. 7317. The later Public Vessels Act, on the other side, was designed by Congress to close the remaining gap in the federal legislation by permitting a libel in personam against the United States for causes of action arising from the operation of its "public" vessels. 43 Stat. 1112, 46 U.S.C. 781; see *Canadian Aviator, Ltd.* v. *United States,* 324 U.S. 215, 220–221.

We are unable to find in the legislative history of either statute the slightest evidence that Congress intended to confer additional rights on federally-employed seamen entitled to the benefits of the Federal Employees' Compensation Act. Indeed, neither the

[11] See, also, *Canadian Aviator, Ltd.* v. *United States,* 324 U.S. 215, 220–221; Comment, *Responsibility of the United States on Maritime Claims Arising Out of the Operation of Government-Owned Vessels,* 39 Yale L.J. (1930), 1189; Note, *The Maritime Liability of the United States,* 100 Univ. Pa. L. Rev. (1952), 689, 691–693.

Congress which passed the Suits in Admiralty Act, nor the Congress which passed the Public Vessels Act, seemed to be aware of any possible problem. In these circumstances, it would be anomalous to hold that the Compensation Act remedy was exclusive as to actions invoked under the later Public Vessels Act, but not exclusive as to actions involving the earlier statute, the Suits in Admiralty Act. This fully explains the Court's rejection of the Fourth Circuit's *Marine* case—a Suits in Admiralty Act case—in *Johansen*.[12]

B. THE EIGHTH CIRCUIT'S *Doyle* OPINION MISINTERPRETED *Johansen*

The Eighth Circuit's contrary result in *Doyle* was engendered, we believe, by the failure of that court to observe the disapproval of the *Marine* case in the *Johansen* opinion, and, moreover, by the Eighth Circuit's belief that the Court's discussion in *Johansen* of the rights of "merchant seamen," as opposed to the rights of "public vessel seamen,"[13] supported a distinction between the rights of those Government employees injured on publicly-operated vessels engaged in public service, and those injured on publicly-operated vessels engaged in merchant service. In this significant respect, we submit that the Eighth Circuit was in error.

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[12] Moreover, the liberal construction of statutes in order to benefit seamen is subject to the rule of strict construction of grants of the right to sue the Government. *McMahon* v. *United States*, 342 U.S. 25, 27. When, as here, Congress has created a special remedy, that remedy is exclusive. *Wilder Manufacturing Company* v. *Corn Products Co.*, 236 U.S. 165, 174–175; *United States* v. *Babcock*, 250 U.S. 328, 331.

[13] See 343 U.S. at 434–5.

The "merchant seamen" to whom the Court was alluding in *Johansen* (343 U.S. at 434–5) were those seamen employed on Government-owned vessels which had been chartered out for private operation by shipping companies,[14] as well as those seamen employed by the Government through the War Shipping Administration, whom Congress had explicitly excluded from the Federal Employees' Compensation Act (see *infra*, pp. 25 *ff.*). Such seamen—not being federal employees for the purpose of entitlement to federal compensation benefits—had, for their only remedy, the usual private seamen's suit for negligence, indemnity, or maintenance against the United States under the Suits in Admiralty Act. In *Johansen,* the issue was simply whether those seamen who were employed by the Government and entitled to federal compensation benefits were to be given, in addition, a right of action against the Government enjoyed by the seamen (*i.e.,* "merchant seamen") who were not regarded as Government employees entitled to compensation benefits. This was the limited sense in which the term "merchant seamen" was referred to in *Johansen,* and we believe it was this limited usage of the term which the

[14] In its first reference to "merchant seamen" (343 U.S. at 432), the *Johansen* opinion recalls the Shipping Act of 1916 as subjecting Government vessels to the standards applicable to private merchant vessels, "if they were purchased, chartered, or leased from the Shipping Board"; the opinion then adds, "Thus a remedy for damages for personal injuries was given to merchant seamen on ships in which the Government had an interest but not to public-vessel seamen." In its context, this reference to "merchant seamen" clearly means those seamen aboard Government-owned ships which had been sold, chartered, or leased to private parties for private operation.

Eighth Circuit failed to perceive. Cf. Judge Kaufman's opinion in *Sullivan*, R. 12, fn. 2.

On the other hand, the issue in the present cases, as well as in *Doyle*, is whether all federal civilian seamen who are entitled to federal compensation benefits (regardless of whether their vessels are employed in merchant or in public service) are to be treated alike, or whether distinctions based upon the type of service in which the vessels are engaged at the time of injury should be drawn. In repudiating *United States* v. *Marine*—a suit brought under the Suits in Admiralty Act because the publicly-operated vessel there was engaged in merchant service[15]—this Court in *Johansen* indicated that such distinctions would not be drawn, and that the Compensation Act would be the exclusive remedy. See *supra*, pp. 14 *ff*.

Accordingly, we submit that the Court's opinion in *Johansen* compels the conclusion that federal civilian seamen entitled to federal compensation benefits are precluded from suing the Government to recover damages for their injuries, despite the fact that the vessels upon which they were employed were engaged in merchant service. Acceptance of the Eighth Circuit's views in *Doyle* would be to impute to Congress an intention to discriminate between the remedies available to seamen employees of the Government on the basis of the nature of the service in which the particular publicly-operated vessel on which they are employed is engaged. In the absence of a clear Congressional mandate justifying this discrimination

[15] See 155 F. 2d 456, 457 (C.A. 4).

(and here there is none), the Compensation Act should "naturally be regarded as exclusive." *Johansen* v. *United States*, 343 U.S. 427, 440. As the court below implicitly recognized, no sound reason exists for presuming a Congressional disposition to treat compensation benefits as appropriate for one class of Government-employed seamen and not for another. Such a presumption would contribute "neither to uniformity nor to fairness." *Id.* at 441.[16]

II

THE COMPENSATION ACT AMENDMENTS OF 1949 DID NOT EVIDENCE A CONGRESSIONAL RECOGNITION THAT FEDERAL SEAMEN WHO ARE ENTITLED TO COMPENSATION BENEFITS ALSO HAVE A RIGHT OF ACTION AGAINST THE GOVERNMENT

We have shown in Point I that, under *Johansen*, the Compensation Act remedy must be deemed exclusive regardless of whether the jurisdiction of the Court is invoked under the Public Vessels Act or the

[16] Since the sale by the Government of the vessels of the Inland Waterways Corporation (involved in *Doyle*) in 1953, the problem presented by these cases—of a right of action under the Suits in Admiralty Act—is now of importance substantially only with respect to the rights of crew members on the two vessels operated by the Panama Canal Company between New York and the Canal Zone. In respect of those two vessels, suits by passengers, shippers, etc., may be brought against the United States in admiralty pursuant to the Suits in Admiralty Act, 46 U.S.C. 741–749, or against the Panama Canal Company pursuant to Canal Zone Code, Title 2, §§ 245, 248(d), 62 Stat. 1075, 1076, 1078, as amended by the Act of September 26, 1950, 64 Stat. 1038.

In our view, military transports are not employed as merchant vessels merely because of the presence aboard of occasional private cargo or passengers, as authorized by 10 U.S.C. 4745 and 4747 (1956).

Suits in Admiralty Act. Petitioners' other argument, *i.e.*, that *Johansen* should be overruled because "circumstances have so changed" (Br. 4) since the Court's decision in that case less than seven years ago, merits little comment. Suffice it to state that *Johansen* rests on the Court's determination that the Compensation Act remedy was intended by Congress to be the exclusive remedy for service-connected injuries of federal civilian seamen entitled to its benefits. It is difficult to see how this conclusion with respect to Congressional intent can be altered by "changing circumstances," absent specific legislation by Congress indicating a contrary intent. Cf. *United States* v. *South Buffalo R. Co.*, 333 U.S. 771, 774–775. And Congress, of course, has enacted no such legislation.

Petitioners further argue (Br. 18–21) that *Johansen* was incorrectly decided, principally because in their view the Court failed to give proper consideration to the 1949 amendments to the Compensation Act. These amendments (63 Stat. 854, *infra*, pp. 33–35) expressly declared the exclusiveness of compensation, but provided that this new declaration should not change the preexisting rights of "* * * a master or member of the crew of any vessel," *infra*, pp. 34, 35. It is petitioners' contention that, by these amendments, Congress had for the first time established the exclusiveness of the compensation remedy and had deliberately excepted seamen (Br. 20). The short and dispositive answer to this contention is that the precise argument was fully considered and rejected by the Court in *Johansen*. The Court said (343 U.S. 427, 436–438):

* * * The purpose of the 1949 amendment is simply "to make it clear that the right to compensation benefits under the act is exclusive and in place of any and all other legal liability of the United States or its instrumentalities * * *." S. Rep. No. 836, 81st Cong., 1st Sess., p. 23. This clarifying amendment, as reported out of the Senate Committee on Labor and Public Welfare, lacked the proviso protecting the rights, if any, of seamen under other federal statutes. However, no seamen's groups having participated in the hearings on the bill, Senator Morse proposed on the floor the proviso on which petitioners rely. Senator Morse himself recognized that his amendment did no more than preserve to seamen any rights which they might have in addition to compensation. There is language in his statement indicating that he was of the opinion that seamen employees had a choice between compensation and litigation in admiralty. 95 Cong. Rec. 13608, 13609. Senator Douglas, who was in charge of the bill, accepted these amendments for the reason that the seamen's groups had not been heard before the committee of Congress. He stated:

"Mr. President, I should like to state my ground for agreeing to the amendments offered by the Senator from Oregon [Mr. Morse]. The primary consideration for accepting the Senator's amendments preserving the maritime rights and other statutory remedies of seamen is the fact that no hearings were held, no arguments were heard, and no discussion was had on this aspect of the pending bill * * *. For the same reason, namely, that we have had no hearings on the matter, we are not seeking to

> legislate affirmatively as to certain claims and denials of a right of election of remedies under existing laws, which claims and denials have not yet been adjudicated by the Supreme Court, although various other Federal courts have, in effect, held that federally employed seamen have such an election.
>
> "In short, until the matter may be more fully considered by Congress, we seek by the amendments merely to make sure that seamen shall lose no existing rights."

The Court noted that, as thus recommended, the bill passed the Senate (95 Cong. Rec. 13609) and was accepted by the House, without debate, a week later (95 Cong. Rec. 14060). And the Court concluded (343 U.S. at 438):

> * * * This background makes it clear that the 1949 amendments, far from changing the law respecting seamen's remedies, do not even reflect a belief on the part of Congress that the remedy of compensation is not exclusive. There is nothing in these amendments to affect consideration of whether petitioners' sole remedy is under the Federal Employees Compensation Act. Cf. *Johnson* v. *United States,* 186 F. 2d 120, 123. If the remedy of compensation was exclusive prior to the passage of the 1949 amendment, it is exclusive now.

It was thus abundantly clear to the Court, after full consideration of the legislative history of the 1949 amendments, that no change in the existing law was intended. "If the remedy of compensation was

exclusive prior to the passage of the 1949 amendment, it is exclusive now." *Ibid.*[17]

III

WHEN CONGRESS, FOR SPECIAL REASONS, HAS THOUGHT IT DESIRABLE THAT SEAMEN EMPLOYED ON GOVERNMENT VESSELS ENGAGED IN MERCHANT SERVICE SHOULD HAVE THE RIGHT TO SUE THE UNITED STATES UNDER THE SUITS IN ADMIRALTY ACT, IT HAS PASSED SPECIAL LEGISLATION TO THAT EFFECT AND PROHIBITED SUCH SEAMEN FROM RECEIVING COMPENSATION

In our view, the enactment by Congress of the Clarification Act of 1943[18] (extending to merchant seamen employed through the War Shipping Administration the right of suit against their employer, the United States, and excluding them from the Federal Employees' Compensation Act) established that Congress never intended federal civilian seamen to enjoy both a right of action against the United States as well as a right to compensation benefits.

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[17] Nor is this conclusion altered by the petitioners' seeming reliance (Br. 20-21) on Section 303(g) of the 1949 amendments. That section was intended merely to extend the time within which an injured employee might apply for benefits due under the Act, if and when any action he had brought against the United States was decided against him. See *Sasse* v. *United States*, 201 F. 2d 871, 873–874 (C.A. 7); *De Vos* v. *United States*, 121 F. Supp. 514 (E.D. N.Y.); cf. *United States* v. *Meyer*, 200 F. 2d 110, 111 (C.A. 5). There is nothing in the section which authorizes suit against the United States by crew members who are entitled to compensation benefits.

[18] War Shipping Administration (Clarification) Act, 57 Stat. 45, 50 U.S.C. App. 1291, *infra*, pp. 36–37.

When the War Shipping Administration undertook the large-scale operation of virtually the entire private merchant fleet in 1942, the question arose as to the desirability of assimilating such ordinarily private seamen (temporarily in Government service in order to man the cargo vessels supporting the war effort) to those seamen who were federal employees under the Compensation Act.[19] The General Counsel of the War Shipping Administration explained the situation to Congress in this way:[20]

> As private employees, seamen are entitled to the protection of the old-age benefit provision of the Social Security System; they and their dependents may recover damages for injury or death of seamen through the provision of the Jones Act, they are protected by other remedies and they have certain rights with respect to allocations of wages. When the same seamen work on vessels which are bareboated or owned by the War Shipping Administration they become Government employees and these rights, which union labor has learned to prize very highly, either cease to exist or are substantially impaired. In exchange for such lost privileges, these seamen acquire special privileges of Gov-

[19] In February and March 1942, when the War Shipping Administration was created and proceeded to requisition the American merchant fleet and inaugurate its plan for direct Government operation, the entire merchant fleet was privately operated, employing some 55,000 seamen. Ninety percent of the 1,375 ocean-going vessels were privately owned. Ten percent were Government-owned but were demised by the Maritime Commission for private operation.

[20] House Merchant Marine and Fisheries Committee, 77th Cong., 2d Sess., Hearings on H.R. 7424 (September 2, 1942), p. 14.

> ernment employees such as right to compensation for injury under the United States Compensation Act, a questionable right to retirement benefits and other rights peculiar to Government employees.
>
> Seamen constantly interchange between time chartered vessels on which they are private employees, and bareboated or owned vessels on which the personnel becomes employees of the Government. The rights of seamen may thus change from voyage to voyage depending upon the particular status of the vessel upon which they happen to sail. In view of the interchangeability of seamen, this creates many administrative difficulties. Moreover, it seems to us that since the interval of Government operation represents but a temporary phase of the history of the merchant marine, it would be best to maintain the status of seamen as private employees with respect to such matters.

The general understanding in and out of Congress was plainly that the exclusive right of federal civilian seamen was compensation, and that WSA merchant seamen were being fairly dealt with when they were given, in exchange for the right of compensation, the same right of recovery by suit, *but without compensation*, which had always been the exclusive right of private merchant seamen. This understanding was emphasized in the letter of the Chairman of the Compensation Commission commenting on the Clarification bill. It stated:[21]

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[21] House Merchant Marine and Fisheries Committee, 77th Cong., 2d Sess., Hearings on H.R. 7424 (September 2, 1942), p. 6; H. Rept. No. 107, 78th Cong., 1st Sess., p. 34.

> It is the Commission's understanding of the proposed legislation that its application is to be limited to seamen employed by or on behalf of the War Shipping Administration, and that the rights heretofore long enjoyed by seamen in other Federal services, who have acquired status as civil employees of the United States, will not be disturbed or affected. In this connection it may be pointed out that in services such as the Army Transport Service, seamen have been employed directly as civil employees of the United States and for many years have received the protection of the Federal Employees' Compensation Act.
>
> * * * The bill apparently would merely provide a basis for recovery of damages for injury or death only in the very limited class of cases where the employer was negligent. Negligence of the employer or contributory negligence or fault of the employee is not a factor in determining the payment of workmen's compensation benefits, and employees and dependents receive the same protection in all injury or death cases, whether or not the employer was at fault.

Thus, fully aware of the difference in rights, Congress deliberately extended to WSA seamen the right to sue the United States under the Suits in Admiralty Act, and, at the same time, prohibited them from receiving compensation benefits. If WSA seamen already had a right of action against the United States

under the Suits in Admiralty Act, as petitioners must argue, there would have been no need to pass legislation granting them a right to sue and excluding them from compensation.

Moreover, it is difficult to believe, as petitioners also must argue, that, if injured seamen on publicly-operated vessels engaged in merchant service had both the right to compensation and the right of action for damages, that Congress in the Clarification Act would have discriminated against WSA crew members by giving them only a right of recovery by means of suit and depriving them of the right to compensation. The purpose of the Clarification Act was certainly not to restrict the rights of those merchant seamen to whom it applied.

We submit, therefore, that the Clarification Act of 1943 serves as further strong evidence that Congress never intended to confer upon federal civilian seamen injured on publicly-operated vessels engaged in merchant service a right to compensation benefits, plus an additional right to recovery by means of suit. When Congress deemed it desirable, for special reasons, to allow the large class of WSA merchant seamen to bring suit against the United States under the Suits in Admiralty Act, it never for one moment considered the possibility of also extending compensation coverage to them. By the same token, as the *Johansen* case holds, Congress has never conferred upon seamen injured on publicly-operated vessels engaged in public service, who are entitled to compensation benefits, an additional right of recovery by means of suit. It would be unreasonable, we believe, to infer, in the

silence of Congress, that seamen injured on publicly-operated vessels engaged in merchant service, who are indisputably entitled to compensation benefits, enjoy additional rights over WSA seamen (who are entitled to bring suit, but are not entitled to compensation) or to the other federal civilian seamen (who are entitled to compensation, but cannot bring suit).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgments below should be affirmed.

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MARCH 1959.

APPENDIX

1. The pertinent provisions of the Suits in Admiralty Act of 1920, 41 Stat. 525, 46 U.S.C. 741, 742, are as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided,* That this Act shall not apply to the Panama Railroad Company.
>
> SEC. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. * * *

* * * * *

2. The pertinent provisions of the Public Vessels Act of 1925, 43 Stat. 1112, 46 U.S.C. 781, 782, are as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: *Provided,* That the cause of action arose after the 6th day of April, 1920.

SEC. 2. That such suit shall be brought in the district court of the United States for the district in which the vessel or cargo charged with creating the liability is found within the United States, or if such vessel or cargo be outside the territorial waters of the United States, then in the district court of the United States for the district in which the parties so suing, or any of them, reside or have an office for the transaction of business in the United States; or in case none of such parties reside or have an office for the transaction of business in the United States, and such vessel or cargo be outside the territorial waters of the United States, then in any district court of the United States. Such suits shall be subject to and proceed in accordance with the provisions of an Act entitled "An Act authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes," approved March 9, 1920, or any amendment thereof, in so far as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest.

* * * * *

3. The pertinent provisions of the Federal Employees' Compensation Act of 1916, 39 Stat. 742, 5 U.S.C. 751, are as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from a personal injury sustained while in the performance of his duty, but no compensation shall be paid if the injury or death is caused by the willful misconduct of the employee or by the employee's intention to bring about the injury or death of himself or of another, or if intoxication of the injured employee is the proximate cause of the injury or death.
>
> * * * * *
>
> SEC. 7. That as long as the employee is in receipt of compensation under this Act, or, if he has been paid a lump sum in commutation of installment payments, until the expiration of the period during which such installment payments would have continued, he shall not receive from the United States any salary, pay, or remuneration whatsoever except in return for services actually performed, and except pensions for service in the Army or Navy of the United States.
>
> * * * * *

4. The pertinent provisions of the Federal Employees' Compensation Act Amendments of 1949, 63 Stat. 854, are as follows:

> * * * * *
>
> SEC. 201. Section 7 of the Federal Employees' Compensation Act, as amended (5 U.S.C., 1946 edition, sec. 757), is further amended by inserting the designation "(a)" immediately before the first sentence thereof and by adding to such section a new subsection reading as follows:

"(b) The liability of the United States or any of its instrumentalities under this Act or any extension thereof with respect to the injury or death of an employee shall be exclusive, and in place, of all other liability of the United States or such instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and anyone otherwise entitled to recover damages from the United States or such instrumentality, on account of such injury or death, in any direct judicial proceedings in a civil action or in admiralty, or by proceedings, whether administrative or judicial, under any other workmen's compenation law or under any Federal tort liability statute: *Provided, however,* That this subsection shall not apply to a master or a member of the crew of any vessel."

* * * * *

SEC. 302. The provisions of this Act shall not be construed to authorize the payment of any compensation under the Federal Employees' Compensation Act in any case where, pursuant to private relief legislation, a beneficiary of such legislation has accepted payment of a grant in satisfaction of the liability of the United States (or its corporation, agency, or other instrumentality) in such case, or where such liability has been compromised and settled, or other satisfaction received, as the result of any action sounding in tort or under maritime law, or where a lump sum has been received under section 14 of the Federal Employees' Compensation Act and the lump-sum award is not modified or set aside for other reasons.

SEC. 303. * * *

* * * * *

(g) The amendment made by section 201 of this Act to section 7 of the Federal Employees' Compensation Act, making the remedy and liability under such Act exclusive except as to masters or members of the crew of any vessel, shall apply to any case of injury or death oc-

curring prior to the date of enactment of this Act: *Provided, however,* That any person who has commenced a civil action or an action in admiralty with respect to such injury or death prior to such date, shall have the right at his election to continue such action notwithstanding any provision of this Act to the contrary, or to discontinue such action within six months after such date before final judgment and file claim for compensation under the Federal Employees' Compensation Act, as amended, within the time limited by sections 15 to 20 of such Act (including any extension of such time limitations by any provision of this Act), or within one year after enactment of this Act, whichever is later. If any such action is not discontinued and is decided adversely to the claimant on the ground that the remedy or liability under the Federal Employees' Compensation Act is exclusive, or on jurisdictional grounds, or for insufficiency of the pleadings, the claimant shall, within the time limited by sections 15 to 20 of such Act (including any extension of such time limitations by any provision of this Act), or within one year after final determination of such cause, whichever is later, be entitled to file a claim under such Act.

* * * * *

SEC. 305. (a) Nothing contained in this Act shall be construed to affect the exclusion of certain seamen (as defined in the Act of March 24, 1943, ch. 26, 57 Stat. 45, as amended; 50 U.S.C., Appendix, sec. 1291) from the terms of the Federal Employees' Compensation Act, as provided by such Act of March 24, 1943, as amended.

(b) Nothing contained in this Act shall be construed to affect any maritime rights and remedies of a master or member of the crew of any vessel.

* * * * *

5. The pertinent provisions of the War Shipping Administration (Clarification) Act of 1943, 57 Stat. 45, 50 U.S.C. App. 1291, are as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) officers and members of crews (hereinafter referred to as "seamen") employed on United States or foreign flag vessels as employees of the United States through the War Shipping Administration shall, with respect to (1) laws administered by the Public Health Service and the Social Security Act, as amended by subsection ~~(b)(2) and (3) of this~~ section; (2) death, injuries, illness, maintenance and cure, loss of effects, detention, or repatriation, or claims arising therefrom not covered by the foregoing clause (1); and (3) collection of wages and bonuses and making of allotments, have all of the rights, benefits, exemptions, privileges, and liabilities, under law applicable to citizens of the United States employed as seamen on privately owned and operated American vessels. Such seamen, because of the temporary wartime character of their employment by the War Shipping Administration, shall not be considered as officers or employees of the United States for the purposes of the United States Employees Compensation Act, as amended; the Civil Service Retirement Act, as amended; the Act of Congress approved March 7, 1942 (Public Law 490, Seventy-seventh Congress); or the Act entitled "An Act to provide benefits for the injury, disability, death, or detention of employees of contractors with the United States and certain other persons or reimbursement therefor", approved December 2, 1942 (Public Law 784, Seventy-seventh Congress). Claims arising under clause (1) hereof shall be enforced in the same manner as such claims would be enforced if the seaman were employed on a privately owned and operated American vessel. Any claim re-

ferred to in clause (2) or (3) hereof shall, if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act, notwithstanding the vessel on which the seaman is employed is not a merchant vessel within the meaning of such Act. Any claim, right, or cause of action of or in respect of any such seaman accruing on or after October 1, 1941, and prior to the date of enactment of this section may be enforced, and upon the election of the seaman accruing on or after October 1, 1941, and prior to the date of enactment of this section may be enforced, and upon the election of the seaman or his surviving dependent or beneficiary, or his legal representative to do so shall be governed, as if this section had been in effect when such claim, right, or cause of action accrued, such election to be made in accordance with rules and regulations prescribed by the Administrator, War Shipping Administration. Rights of any seaman under the Social Security Act, as amended by subsection (b)(2) and (3), and claims therefor shall be governed solely by the provisions of such Act, so amended. When used in this subsection the term "administratively disallowed" means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration. When used in this subsection the terms "War Shipping Administration" and "Administrator, War Shipping Administration" shall be deemed to include the United States Maritime Commission with respect to the period beginning October 1, 1941, and ending February 11, 1942, and the term "seaman" shall be deemed to include any seaman employed as an employee of the United States through the War Shipping Administration on vessels made available to or subchartered to other agencies or departments of the United States.

* * * * *

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